OCT 10 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 74-409

JIMMY H. ROSE, Warden,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION, and HONORABLE ROBERT M. McRAE, Judge,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

BART C. DURHAM, III
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INDEX

Page

Petition 1

Opinion below 1

Jurisdiction 2

Questions presented 2

Statement of the case 2

Argument 4

I. This case involves an important issue of federal law heretofore unlitigated 4

II. The issues in this case are extraordinary 4

III. The District Court exceeded its territorial jurisdiction 5

IV. Respondent has clearly abused his discretion 5

A. The discovery granted is neither necessary nor appropriate and is far beyond the limited authority granted by Harris v. Nelson 6

B. Principles taken from the criminal rules should govern discovery in habeas corpus 6

C. Civil discovery rules are inappropriate in this case 7

D. Discovery is unnecessary in this case 8

V. The United States Court of Appeals for the Sixth Circuit should have issued a writ of mandamus ... 9

Appendix A A-1

Appendix B A-18

Appendix C A-25

Appendix D A-46

Cases Cited

Bowman Dairy Company v. United States, 341 U.S. 214 (1950) 7

Cates v. LTV Aerospace Corp., 480 F.2d 620 (5th Cir. 1973) 5

Chessman v. Teets, 239 F.2d 205 (9th Cir. 1956) 5, 7

Elder-Beerman Stores Corp. v. Federated Department Stores, 45 Fed. 515 (S.D.N.Y. 1968) 5

Harris v. Nelson, 394 C.S. 286 (1969) 4, 6, 7, 8, 9, 10

Ray v. Rose, 491 F.2d 285 (6th Cir. 1974), cert. den. — U.S. —, 94 S.Ct. 2650 (1974) 2

United States v. Nixon, — U.S. —, 94 S.Ct. 3090 (1974) 7

United States v. United States District Court for the Eastern District of Michigan, 444 F.2d 651 (6th Cir. 1971), aff'd, 407 U.S. 297 10

Walker v. Nelson, 468 F.2d 451 (9th Cir. 1972) 8

Will v. United States, 389 U.S. 90 (1967) 4

Statutes and Rules Cited

Federal Rules of Appellate Procedure, Rule 21 9

Federal Rules of Civil Procedure, Rules 26, 33, 34, 45, 81 .....5, 7, 8

Federal Rules of Criminal Procedure, Rules 16 and 17 .. 6, 7

28 U.S.C. § 1651 ..... 5, 9

28 U.S.C. § 2246 8

Miscellaneous Cited

The New York Times 1969 Index 8

IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

JIMMY H. ROSE, Warden,
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UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION, and HONORABLE ROBERT M. McRAE, Judge,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

Jimmy H. Rose, Warden, by and through the Attorney General of the State of Tennessee, Petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINION BELOW

The Orders of the respondent are not reported. (Appendix A). The opinion of the United States Court of Appeals for the Sixth Circuit is not reported. (Appendix D).

JURISDICTION

The United States Court of Appeals for the Sixth Circuit denied petitioner's Petition for a Writ of Mandamus seeking to compel the Honorable Robert M. McRae, Jr. to vacate discovery orders issued in the case of *Ray v. Rose*. The judgment of the United States Court of Appeals for the Sixth Circuit, Appendix D, was filed October 3, 1974. Jurisdiction of this Court is invoked under 28 U.S.C., § 1245(1).

QUESTIONS PRESENTED

1. Whether the district court exceeded its jurisdiction by ordering production of documents from non-parties beyond the court's territorial jurisdiction.

2. Whether the district court abused its discretion by ordering pre-hearing discovery of documents which are not admissible, not material, not necessary for a full and fair hearing and, in some cases, not relevant.

3. Whether mandamus relief is available and appropriate in this case.

STATEMENT OF THE CASE

In preparation for the evidentiary hearing[1] on James Earl Ray's habeas corpus petition ordered by the United States Court of Appeals for the Sixth Circuit in *Ray v. Rose*, 491 F.2d 285 (6th Cir. 1974), cert. den. — U.S. —, 94 S. Ct. 2650 (1974), the Honorable Robert M. McRae, Jr. granted most of Ray's

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[1] Respondent's pre-trial order is attached as Appendix B.

twelve motions for production of documents from non-parties, most of whom are beyond the district court's territorial jurisdiction.[2] Respondent ruled that the discovery sought was "within the scope of apparent relevant issues", and accordingly, Ray was entitled to discover all documents specified in respondent's orders.

In response, petitioner filed A Petition for a Writ of Mandamus and a Motion for a Stay of Respondent's Orders in the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit, in an order filed October 3, 1974, denied respondent's Petition for a Writ of Mandamus, ruling that "the said discovery orders are well within the exercise of sound discretion of the district judge . . ." (Appendix D). By implication, petitioner's application for a stay was also denied.

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[2] The orders of the district court are included as Appendix A. James Earl Ray's Petition for a Writ of Habeas Corpus is included as Appendix B.

ARGUMENT

I. This Case Involves an Important Issue of Federal Law Heretofore Unlitigated.

The principles of *Harris v. Nelson*, 394 U.S. 286 (1969) have been rendered meaningless by the wholesale application of the Federal Rules of Civil Procedure to this habeas corpus proceeding. The case raises important questions of the breadth of *Harris*. The guidance of the Supreme Court is necessary in this important case which involves the efficient and effective administration of the Writ of Habeas Corpus.

II. The Issues in This Case Are Extraordinary.

As Justice Black stated in his concurring opinion in *Will v. United States*, 389 U.S. 90, 108 (1967).

> I agree that mandamus is an extraordinary remedy which should not be issued except in extraordinary circumstances. And I also realize that the granting of mandamus may bring about the review of a case as would an appeal. Yet this does not deprive a court of its power to issue the writ. Where there are extraordinary circumstances, mandamus may be used to review an interlocutory order which is by no means 'final' and thus appealable under federal statutes. 389 U.S. at 108.

In the case *sub judice*, the District Court has done two extraordinary things:

1. It has exceeded its territorial jurisdiction and
2. It has issued a habeas corpus evidentiary hearing discovery order broader than any in the history of American jurisprudence.

This action prejudices both the petitioner and the non-parties who are subject to respondent's order. The District Court's action also effectively eliminates post-hearing appeal as a viable means of resolving the issue. These circumstances present an extraordinary situation worthy of a writ of mandamus.

III. The District Court Exceeded Its Territorial Jurisdiction.

It is axiomatic that a district court cannot compel a non-party in a foreign jurisdiction to produce documents and to make them available for inspection and copying. Neither Rule 34 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, authorizes such orders. *Cates v. LTV Aerospace Corp.*, 480 F.2d 620, 624 (5th Cir. 1973); *Chessman v. Teets*, 239 F.2d 205, 213 (9th Cir. 1956); *Elder-Beerman Stores Corp. v. Federated Department Stores*, 45 Fed. 515, 518 (S.D.N.Y. 1968).

IV. Respondent Has Clearly Abused His Discretion.

United States District Court, Judge Robert M. McRae, has granted James Earl Ray's discovery motions seeking to inspect *inter alia*:

A. All of the physical evidence gathered by state and federal law enforcement agencies in their investigation of the murder of Dr. Martin Luther King, Jr. in Memphis, Tennessee on April 4, 1968.

B. The desk calendar, diary and other papers of the deceased State court judge who accepted Ray's guilty plea.

C. Author Gerold Frank's notes, memorandum and tapes of conversation with principals in the Ray case.

A. **The discovery granted is neither necessary nor appropriate and is far beyond the limited authority granted by Harris v. Nelson.**

> "[W]hen the court considers it necessary to do so in order that a fair and meaningful evidentiary hearing may be held . . . it may [authorize discovery] of facts relevant to the claims advanced [as] may be necessary or appropriate * * * and agreeable to the usages and principals of law. *Harris v. Nelson*, supra at 300.

B. **Principles taken from the criminal rules should govern discovery in habeas corpus.**

In many respects, habeas corpus evidentiary hearings resemble criminal trials. The subject matter is criminal; the witnesses are usually the same persons who testified in related criminal proceedings and are often subject to similar pressures. The petitioner is, if anything, more desperate than he was as a defendant and the opportunity to create and promote manufactured evidence increases as the petitioner learns more about the law, more about the State's case and as time dims the memories of witnesses.

Other than having concluded that Federal Civil Discovery Rules do not govern habeas corpus proceedings, the courts have not addressed themselves to the problem of precisely what principles should control discovery in habeas corpus actions. Petitioner respectfully insists that the district court is bound by *Harris* and that the text and judicial history of the Federal Rules of Criminal Procedure, particularly Rule 16 and 17, should govern the scope of permissible discovery in this case.

Discovery orders are not the equivalent of orders or subpoenas for the production of evidence at trial. Discovery under Rule 16 Fed. R. Crim. Proc. is narrowly circumscribed and

limited to examination of the physical evidence, reports of scientific tests and recorded statements of the defendant. Statements of witnesses other than the defendant himself are ordinarily not discoverable. Discovery under Rule 16 of material useful for impeaching the credibility of witnesses is impossible.

Rule 17 of the Federal Rules of Criminal Procedure is not a discovery device. This rule authorizes subpoenas duces tecum for the production of papers, documents, and objects at trial. Materials sought under a Rule 17 subpoena must be relevant, admissible and described with specificity. *Bowman Dairy Company v. United States*, 341 U.S. 214 (1950). Under certain circumstances Rule 17(c) authorizes pre-trial production of admissible material in limited instances where the party cannot properly prepare for trial without the production and inspection of the material in advance of the trial and where the failure to obtain such inspection may tend to unreasonably delay the trial itself. Although Rule 17(c) was not intended to provide means of discovery for criminal cases, *Bowman Dairy* at 220, given the territorial limitation on the court's subpoena power,[3] the production of documentary evidence under the habeas corpus equivalent of Rule 17 will inevitably result in significant discovery by the petitioner. Neither Rule 16 nor Rule 17(c) can be used by the petitioner to gain inadmissible material which is admissible only for the purpose of impeaching witnesses. *United States v. Nixon*, — U.S. —, 94 S.Ct. 3090 (1974).

C. **Civil discovery rules are inappropriate in this case.**

On their face respondent's orders draw upon the provisions of Rule 34 of the Federal Rules of Civil Procedures, which under *Harris*, are available, if appropriate, in a habeas corpus action. Because of Rule 34's striking similarity to Rule 33,

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[3] Rule 45 Fed. R. Civ. P.; *Chessman v. Teets*, *supra*.

Harris principles compel the conclusion that Rule 34 is also an inappropriate procedure for this kind of case.

There were four reasons that the court in *Harris* refused to grant blanket application of Rule 33 of the Federal Rules to habeas corpus proceedings and that rationale applies with equal force to Rule 34 in its applicability to the case *sub judice*. As noted in *Harris*, Rule 81(a)(2) and 28 U.S.C. § 2246 mean that federal civil rules are not totally applicable to habeas corpus cases. *Harris, supra* at 294-296. Rule 33 in *Harris*, as is true of Rule 34 here, applies only to an adverse party. It is noteworthy that petitioner warden is the only adverse party and none of the motions are directed to him. In *Harris*, the interrogatories were directed to the warden and later answered by the warden. See *Walker v. Nelson*, 468 F.2d 451, 452 n. 1 (9th Cir. 1972). Rule 33, as is true of Rule 34, has an extremely broad scope of discovery by reference to Rule 26 and under both rules discovery of inadmissible evidence, if relevant, is proper. These considerations were the underpinnings of *Harris*, and these considerations dictate that respondent's usage by implication of Rule 34 of the Civil Rules is inappropriate for this case.

D. **Discovery is unnecessary in this case.**

The murder of Martin Luther King, Jr. and its judicial aftermath was a major journalistic event. At least five widely distributed books have been written on the subjects. *The New York Times 1969 Index*, covering the events immediately preceding and following the guilty plea, runs to several thousand of words. Both Memphis newspapers ran daily stories on the progress of the case from the time of Ray's capture in July, 1968 until well after the March 10, 1969 guilty plea. These papers are readily available to anyone interested enough to look at them. Both Memphis newspapers are on microfilm at the

Library of Congress, within walking distance of the office of Ray's attorneys, Fensterwald and Lesar.

All the issues surrounding Percy Foreman's alleged dereliction of duty and the alleged conspiracy between Hanes, Huie and Foreman to force Ray to plead guilty have been previously litigated. *Ray v. Foreman*, 441 F.2d 1266 (6th Cir. 1971), *cert. denied*, 405 U.S. 926 (1972). If the doctrine of collateral estoppel has applicability in the case at bar, it surely operates to bar further discovery on this issue. In addition, Ray's attorneys have had the benefit of two oral depositions of Percy Foreman on the relevant issues in this case, which total more than ten hours of examination and cross-examination. Oral depositions have also been taken from William Bradford Huie and Arthur Hanes, Sr. The discovery granted by respondent is not only burdensome and unreasonable, but in light of past opportunity for discovery, is unnecessary and inappropriate. As stated in *Harris v. Nelson*, such discovery "would do violence to the efficient and effective administration of a Great Writ." 384 U.S. at 297.

V. **The United States Court of Appeals for the Sixth Circuit Should Have Issued a Writ of Mandamus.**

The authority of a Court of Appeals to issue a writ of mandamus is founded upon the All Writs Act, 28 U.S.C. § 1651, which provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdiction and agreeable to the usages and principals of law.

Rule 21 of the Federal Rules of Appellate Procedure establishes the procedure to be followed in petitioning for a writ of mandamus. Both the All Writs Act and Rule 21 apply in this

case and provide the necessary authority and procedure for the writ sought by petitioner.

Mandamus is a traditional and appropriate means of reviewing discovery orders in extraordinary situations like the present habeas corpus case. *Harris v. Nelson*, 394 U.S. 286 (1969), the leading case on the habeas corpus discovery, involved a writ of mandamus. Accord, *United States v. United States District Court for the Eastern District of Michigan*, 444 F.2d 651 (6th Cir. 1971), *aff'd*, 407 U.S. 297, where this court reviewed a discovery order in the criminal case by writ of mandamus.

Respectfully submitted

.....

BART C. DURHAM, III
Assistant Attorney General
State of Tennessee

Certificate of Service

I hereby certify that I have mailed copies of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit this 9th day of October, 1974 to:

Honorable Robert M. McRae
United States District Court
Western District of Tennessee
Western Division
Memphis, Tennessee 38103

Mr. Bernard Fensterwald
Attorney at Law
910 16th Street, N.W.
Washington, D.C. 20006

Mr. James H. Lesar
Attorney at Law
1231 4th Street, N.W.
Washington, D.C. 20024

Mr. Robert Livingston
Attorney at Law
Commerce Title Building
Memphis, Tennessee 38103

.....

WILLIAM J. HAYNES, JR.
Assistant Attorney General
State of Tennessee

APPENDIX

APPENDIX A

In the United States District Court
For the Western District of Tennessee
Western Division

James Earl Ray,
Petitioner.

vs.

J. H. Rose, Warden,
Respondent.

No. C-74-166

DISCOVERY ORDER PERTAINING TO PERCY FOREMAN

This matter having come on for hearing on the 21st day of August 1974, upon petitioner's motion for production of documents, and the Court having heard argument of counsel, and it appearing that certain matters sought from Percy Foreman are within the scope of the apparent relevant issues in this case and that discovery should be had with regard thereto;

It Is, Therefore, Ordered that Percy Foreman, 521 First National Life Building, Houston, Texas, produce and permit counsel for petitioner to inspect and copy the following documents: all correspondence with William Bradford Huie, George McMillan, Gerold Frank, Arthur Hanes, Sr., Arthur Hanes, Jr., Judge Preston W. Battle, James Earl Ray, Roger Frisby, David Calcutt, Michael Eugene; any editor, employee, or representative of Life Magazine or Look Magazine; and former Attorney General Ramsey Clark or any other member of the Department of Justice who corresponded with Percy Foreman on the Ray case.

The production approved for discovery herein shall be subject to objection on the part of Percy Foreman on the grounds of unreasonableness, oppressiveness or other grounds recognized elsewhere in the usages and principles of law.

Copies or photographs of the items produced shall be subject to the protective order of August 21, 1974, wherein counsel for the parties shall confine their use of all records, correspondence and any other documentary or photographic proof to the singular use of preparation for the evidentiary hearing in this cause.

This 22nd day of August 1974.

/s/ Robert M. McRae
United States District Judge

In the United States District Court
For the Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
v.
J. H. Rose, Warden,
Respondent.
No. C-74-166

ORDER

This matter having come on for hearing on the 21st day of August, 1974, upon petitioner's motion for the production of documents, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

Ordered, that the Union Planters National Bank of Memphis, Tennessee, shall make the following documents available for inspection and copying by counsel for petitioner:

1. All records pertaining to the opening, maintenance, and closing of Account No. 01-385-6178, including all records or statements of deposits, withdrawals, and transfers made to or from said account; and

2. All correspondence exchanged between Percy Foreman and the Union Planters National Bank, or any of its attorneys or representatives, with respect either to Account No. 01-385-6178 or the request of James Earl Ray that he be provided with the records of said account.

/s/ Robert M. McRae
United States District Judge

In the United States District Court for the
Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
vs.
J. H. Rose, Warden,
Respondent.
No. C-74-166.

DISCOVERY ORDER PERTAINING TO DISTRICT ATTORNEY GENERAL

This matter having come on for hearing on the 21st day of August, 1974, upon petitioner's motion for production of documents, and the Court having heard argument of counsel, and it

appearing that certain matters sought from the District Attorney General are within the scope of the apparent relevant issues in this cause and that discovery should be had with regard thereto:

It Is, Therefore, Ordered that the District Attorney General, Fifteenth Judicial Circuit of Tennessee, County of Shelby, produce and permit Bernard Fensterwald, Jr., James Lesar or Robert I. Livingston, counsel for petitioner, to inspect and copy the following documents or items of physical evidence:

1. All records relating to the negotiations of the guilty plea, including all copies of all proposed stipulations, whether drafts or completed versions and whether signed or initialed by James Earl Ray or not;

2. All correspondence between the prosecution and Percy Foreman, William Bradford Huie, Hugh Stanton, Jr., Hugh Stanton, Sr., Arthur Hanes, Jr., Arthur Hanes, Sr., Gerold Frank and George McMillan, prior to the entry of the guilty plea by James Earl Ray in the Criminal Court of Shelby County Tennessee, on March 10, 1969.

7. All documents or items of physical evidence obtained in discovery by Arthur Hanes, Sr.

Items numbered 3, 4, 5, 6 and 8 in the Motion for Production pertaining to the Attorney General are denied as appropriate items for discovery, except any photographs of the bathroom window still referred to in Item 5.

The production approved for discovery herein shall be subject to objection on the part of the District Attorney General on the grounds of unreasonableness, oppressiveness or other grounds recognized elsewhere in the usages and principles of law.

Copies or photographs of the items produced shall be subject to the protective order of August 21, 1974, wherein counsel for

the parties shall confine their use of all records, correspondence and any other documentary or photographic proof to that singular use of preparation for the evidentiary hearing in this cause.

This 22 day of August, 1974.

/s/ Robert M. McRae
United States District Judge

In the United States District Court for the
Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
vs.
J. H. Rose, Warden,
Respondent.
No. C-74-166.

DISCOVERY ORDER PERTAINING TO GEORGE McMILLAN

This matter having come on for hearing on the 21st day of August, 1974, upon petitioner's motion for production of documents, and the Court having heard argument of counsel, and it appearing that certain matters sought from George McMillan are within the scope of the apparent relevant issues in this cause, and that discovery should be had with regard thereto;

It Is, Therefore, Ordered that George McMillan, Coffee Point, Frogmore, South Carolina, produce and permit Bernard Fensterwald, Jr., James Lesar and Robert I. Livingston, counsel for petitioner, to inspect and copy the following documents:

All correspondence with Percy Foreman and all notes or memoranda on any conversation or meeting with Percy Foreman pertaining to James Earl Ray.

The production approved for discovery herein shall be subject to objection on the part of George McMillan on the grounds of unreasonableness, oppressiveness or other grounds recognized elsewhere in the usages and principles of law.

Copies of photographs of the items produced shall be subject to the protective order of August 21, 1974, wherein counsel for the parties shall confine their use of all records, correspondence and any other documentary and photographic proof to that singular use of preparation for the evidentiary hearing in this cause.

This 22 day of August, 1974.

/s/ Robert M. McRae
United States District Judge

In the
United States District Court
For the Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
vs.
J. H. Rose, Warden,
Respondent.
No. C-74-166

DISCOVERY ORDER PERTAINING TO GEROLD FRANK

This matter having come on for hearing on the 21st day of August 1974, upon petitioner's motion for production of documents, and the Court having heard argument of counsel, and it appearing that certain matters sought from Gerold Frank are within the scope of the apparent relevant issues in this cause and that discovery should be had with regard thereto;

It Is, Therefore, Ordered that Gerold Frank, 930 Fifth Avenue, New York City, produce and permit Bernard Fensterwald, Jr., James Lesar and Robert I. Livingston, counsel for petitioner, to inspect and copy the following documents:

1. All notes, memorada, transcripts, and tape recordings of any conversation or interview with Percy Foreman, Hugh Stanton, Sr., or William Bradford Huie pertaining to James Earl Ray;

2. Copies of portions of diaries "kept by principals" in the Ray case and any notes or memoranda which Frank made on those diaries;

5. All correspondence between Gerold Frank and Phil Canale, Percy Foreman, William Bradford Huie, Arthur Hanes, Sr., Arthur Hanes, Jr. and Hugh Stanton, Sr.

Items 3 and 4 as set forth in the Motion for Production pertaining to Gerold Frank, and the portions of items 1, 2 and 5 not specifically allowed above, are denied as appropriate discovery because they are too broad.

The production approved for discovery herein shall be subject to objection on the part of Gerold Frank on the grounds of unreasonableness, oppressiveness or other grounds recognized elsewhere in the usages and principles of law.

Copies or photographs of the items produced shall be subject to the protective order of August 21, 1974, wherein counsel for the parties shall confine their use of all records, correspondence and any other documentary or photographic proof to that singular use of preparation for the evidentiary hearing in this cause.

This 22nd day of August 1974.

/s/ Robert M. McRae
United States District Judge

In the
United States District Court
For the Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
vs.
J. H. Rose, Warden,
Respondent.
No. C-74-166

DISCOVERY ORDER PERTAINING TO RUSSELL X. THOMPSON

This matter having come on upon petitioner's motion for production of documents, filed August 22, 1974, and it appearing that certain matters sought from Russell X. Thompson are within the scope of the apparent relevant issues in this cause and that discovery should be had with regard thereto;

It Is, Therefore, Ordered that Russell X. Thompson produce and permit counsel for petitioner to inspect and copy the following documents:

1. All notes, memoranda, transcripts or tape recordings pertaining to Mr. Thompson's investigation into the Ray case;

2. All correspondence between Mr. Thompson and Arthur Hanes, Renfro Hays, and Mr. Hugh Stanton in regard to the Ray case.

The production approved for discovery herein shall be subject to objection on the part of Russell X. Thompson on the grounds of unreasonableness, oppressiveness or other grounds recognized elsewhere in the usages and principles of law.

Copies or photographs of the items produced shall be subject to the protective order of August 21, 1974, wherein counsel for the parties shall confine their use of all records, correspondence and any other documentary or photographic proof to that singular use of preparation for the evidentiary hearing in this cause.

This 26th day of August 1974.

/s/ Robert M. McRae
United States District Judge

In the United States District Court
For the Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
vs.
J. H. Rose, Warden,
Respondent.
No. C-74-166.

DISCOVERY ORDER PERTAINING TO
WILLIAM BRADFORD HUIE

This matter having come on for hearing on the 21st day of August, 1974, upon petitioner's motion for production of documents, and the Court having heard argument of counsel, and it appearing that certain matters sought from William Bradford Huie are within the scope of the apparent relevant issues in this cause and that discovery should be had with regard thereto;

. It Is, Therefore, Ordered that William Bradford Huie, of Hartselle, Alabama, produce and permit Bernard Fensterwald,

Jr., James Lesar and Robert I. Livingston, counsel for petitioner, to inspect and copy the following documents:

1. All correspondence with James Earl Ray, Arthur Hanes, Sr., Arthur Hanes, Jr., Percy Foreman, Gerold Frank, George McMillan, Jerry Ray and Judge Preston W. Battle.

2. All correspondence with Delacorte Press or any other member or affiliate or subsidiary of the Dell Publishing Company corporate structure regarding the publication of *"They Slew the Dreamer", "He Slew the Dreamer,"* or any other book, article, or news feature on the Ray case; and all correspondence regarding any T.V. or any other work by Huie on the Ray case;

3. All correspondence with W. H. Allen & Company, London, England, regarding the publication of *"They Slew the Dreamer," "He Slew the Dreamer,"* or any other work by Huie on the Ray case;

4. All contracts, drafts of contracts, and amendments to contracts entered into between William Bradford Huie and Delacorte Press with respect to the publication of *"They Slew the Dreamer," "He Slew the Dreamer,"* or any other work by Huie on the Ray case; and specifically including all contracts, drafts of contracts, and amendments to contracts for the sale of subsidiary rights in the works by Huie on the Ray case to any publisher or movie producer, foreign or domestic;

5. All correspondence between William Bradford Huie and *Look* Magazine with regard to the publication by Huie, Arthur Hanes, or Percy Foreman of articles on the Ray case;

6. Copies of all drafts or revisions of articles by Arthur Hanes and Percy Foreman published in *Look* Magazine;

7. All contracts, drafts of contracts, and amendments to contracts entered into between William Bradford Huie and *Look* Magazine in regard to the publication of articles by Huie on the Ray case;

8. All accounting statements or other financial records of money or advances or loans paid out to William Bradford Huie by *Look* Magazine, Delacorte Press, W. H. Allen & Co., or any other book or magazine publisher, domestic or foreign, in connection with his works on the James Earl Ray story;

10. All notes, memoranda, tape recordings, or transcripts of phone calls concerning the Ray case from June 8, 1968, through March 11, 1969;

12. All documents or materials provided Huie by the Office of the Attorney General of Shelby County, the FBI, or the United States Department of Justice, and any notes or memoranda on those documents or materials; and

13. All notes, memoranda, writings, and other materials taken by Huie to the Shelby County Grand Jury when he testified before it on February 7, 1969.

Items numbered 9 and 11 in the motion are denied upon the basis that they are not sufficiently specific and are too broad in scope.

The production approved for discovery herein shall be subject to objection on the part of William Bradford Huie on the grounds of unreasonableness, oppressiveness or other grounds recognized elsewhere in the usages and principles of law.

Copies or photographs of the items produced shall be subject to the protective order of August 21, 1974, wherein counsel for the parties shall confine their use of all records, correspondence and any other documentary or photographic proof to that singular use of preparation for the evidentiary hearing in this cause.

This 22 day of August, 1974.

/s/ Robert M. McRae
United States District Judge

In the United States District Court for the
Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,

vs.

No. C-74-166

J. H. Rose, Warden,
Respondent.

SUPPLEMENTAL ORDER ON DISCOVERY PERTAINING TO WILLIAM BRADFORD HUIE

On August 21, 1974, the Court heard and orally ruled upon the motion for production pertaining to William Bradford Huie. That ruling was filed in written form on August 23, 1974.

On August 22, 1974, counsel for the petitioner supplemented the earlier motion for production in an effort to make the requests heretofore made more specific.

Upon consideration of the Supplemental Motion for Production, the Court is of the opinion that Item number 1 is too broad from the standpoint of scope and relevancy and that Item number 2 is appropriate.

It Is, Therefore, Ordered that the items of discovery from William Bradford Huie authorized by this Court's order entered August 23, 1974, are supplemented by allowing the attorneys named in that order to inspect and copy the additional items to the extent that the same exist:

All notes, memoranda, transcripts or tape recordings of interviews or conversations with Arthur Hanes, Sr., Arthur Hanes, Jr., Percy Foreman, Judge Preston Battle and Jerry Ray.

Said additional items shall be subject to the same objections and the protective order set forth in the Court's order entered August 23, 1974.

This 26th day of August, 1974.

/s/ Robert M. McRae
United States District Judge

In the United States District Court for the
Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
vs.
J. H. Rose,
Respondent.
No. C-74-166

DISCOVERY ORDER PERTAINING TO NED BROWN

This matter having come on for hearing on the 21st day of August 1974, upon petitioner's motion for production of documents, and the Court having heard argument of counsel, and it appearing that certain matters sought from Ned Brown are within the scope of the apparent relevant issues in this cause and that discovery should be had with regard thereto;

It Is, Therefore, Ordered that Mr. Ned Brown and the Ned Brown Agency, 407 N. Maple, Beverly Hills, California, shall make the following documents available for inspection and copy-

ing by Bernard Fensterwald, James Lesar and Robert I. Livingston, counsel for petitioner:

1. All contracts or drafts of contracts pertaining to the James Earl Ray story;

2. All correspondence engaged in with respect to the sale, use, or promotion of works or appearances by William Bradford Huie on the James Earl Ray story, and specifically including: all correspondence with William Bradford Huie, Percy Foreman, Arthur Hanes, Sr., Arthur Hanes, Jr., Mrs. Helen Meyer, of Delacorte Press, any subsidiary corporation or any affiliate or associate of Dell Publishing Company, Carlo Ponti, W. H. Allen & Company, of London, England; Look Magazine, Life Magazine; or any other magazine, newspaper, news syndicate, book publisher, radio or T.V. show, T.V. or movie producer, or the agent, employee, or representative of any of the above;

3. All financial records and accounting statements pertaining to revenues obtained from the sale, use, or promotion of the James Earl Ray story, from whatever sources derived; and

4. All financial records and accounting statements pertaining to the disbursement or distribution of any and all revenues obtained from the sale, use or promotion of the James Earl Ray story.

The production approved for discovery herein shall be subject to objection on the part of Ned Brown on the grounds of unreasonableness, oppressiveness or other grounds recognized elsewhere in the usages and principles of law.

Copies or photographs of the items produced shall be subject to the protective order of August 21, 1974, wherein counsel for the parties shall confine their use of all records, correspondence and any other documentary or photographic proof to that

singular use of preparation for the evidentiary hearing in this cause.

This 22 day of August, 1974.

/s/ Robert M. McRae
United States District Judge

In the United States District Court for the
Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,

v.

J. H. Rose, Warden,
Respondent.

No. C-74-166

ORDER

This matter having come on for hearing on the 21st day of August, 1974, upon petitioner's motion for the production of documents, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

Ordered, that the firm of Hooker, Keeble, Dodson & Harris, 900 Nashville Trust Building, Nashville, Tennessee, shall make the following documents in their possession available for inspection and copying by counsel for petitioner:

1. All files on the Ray case given to the Hooker law firm by William Bradford Huie and Percy Foreman;

2. All correspondence between Mr. Percy Foreman and John J. Hooker, Sr., John J. Hooker, Jr., or any member of their law

firm with respect to their participation or association with Mr. Foreman in the defense of James Earl Ray at his trial for the murder of Dr. Martin Luther King;

3. All correspondence between Mr. Percy Foreman and the firm of Hooker, Keeble, Dodson & Harris concerning the alleged loss of Mr. Foreman's file on the Ray case; and

4. All correspondence, contracts, and drafts of contracts pertaining to the proposed sale of Mr. Huie's rights in the James Earl Ray story to any book or magazine publisher or any movie or T.V. producer.

/s/ Robert M. McRae
United States District Judge

APPENDIX B

In the United States District Court for the
Western District of Tennessee
Western Division

James Earl Ray,
Petitioner,
vs.
J. H. Rose, Warden,
Respondent.
No. C-74-166

ORDER ON PRELIMINARY HEARING

On June 21, 1974, a preliminary hearing was held for the primary purpose of considering what the issues would be at the evidentiary hearing to be conducted pursuant to the Court of Appeals opinion of January 29, 1974. 491 F2d 285.

Counsel responded to this Court's direction by filing, respectively, Petitioner's Memorandum for the Court and Respondent's Motion for a Pretrial Order, wherein various matters of a preliminary nature were raised. This represents the Court's ruling on those matters.

Issues to Be Determined at Evidentiary Hearing

The two primary constitutional questions which must be resolved in this case are:

I. Whether or not James Earl Ray's March 10, 1969 guilty plea to the murder of Dr. Martin Luther King was made intelligently and voluntarily?

II. Whether or not James Earl Ray had the effective assistance of counsel in the matter of the charge against him in the Criminal Court of Shelby County, Tennessee for the murder of Martin Luther King, Jr.?

With regard to Question I there is included in the broadly stated issue of intelligently and voluntarily entering a guilty plea, the issues pertaining to the contentions of coercion, threats and promises of Ray's attorneys in furtherance of an alleged conflict of financial interest on the part of his attorneys.

With regard to Question number II, this Court notes that three days after the remand opinion in the case the Court of Appeals for the Sixth Circuit decided *Beasley v. United States of America*, 491 F2d 687, wherein that court abandoned the "farce and mockery" test for effective assistance of counsel in favor of the more objective test as set forth in that opinion.

It is this Court's opinion and ruling, that at the evidentiary hearing, proof should be offered on the nine "most pertinent" and factual issues as stated in the Court of Appeals opinion on pages 287 and 288 of 491 F2d.

Additionally, this Court concludes that the Court of Appeals opinion requires that this Court consider two additional factual questions which are:

(10) Did James Earl Ray believe at the time he plead guilty that he had no other choice? 491 F2d 290.

(11) Whether or not the various publications of William Bradford Huie produced a substantial sum of money and what was the distribution of the monies? 491 F2d 291, Fn. 4.

In this habeas corpus petition the burden of proof is on the petitioner to prove a violation of his constitutional rights.

Counsel for the petitioner set forth their proposed disputed factual issues in three major categories:

I. Was Ray denied effective assistance of counsel?

II. Did Percy Foreman coerce Ray's plea of guilty?

III. Did Ray's confinement in isolation prior to his guilty plea vitiate his capacity to resist Foreman's and Huie's pressures to plead guilty?

Item I has four subsections, "A" through "D", each of which contain a number of specific questions. Subsections "A" and "B" respectively pertain to whether there was a conflict of interest on the part of Ray's attorneys and whether Foreman adequately investigated the case. Some of the specific questions are expressly covered in the Court of Appeals questions and others are implied in them. However, the Court believes that all of them are issues which should be included, subject to being proved by the petitioner, of course.

Subsections "C" and "D" of Item I pertain to the suppression of evidence and control of witnesses on the part of the prosecution. This Court is of the opinion that those issues are subject to the condition or limitation that they are relevant only if the total circumstances show that the alleged accusations are true and that Percy Foreman's failure to attempt to correct the alleged improprieties of this prosecution violates the standards of *Beasley, supra.*

In this regard counsel for the petitioner contend that subsections "C" and "D" of Item I constitute separate violations of due process rights based upon the doctrine of *Brady v. Maryland,* 373 U. S. 83 (1963). Because counsel contend that they are within the overall scope of effective assistance of counsel, the truth of the accusations against the prosecution must be proved before those facts can be applied to the *Beasley v. United States* test. Therefore, this Court may reserve its consideration of *Brady v. Maryland* standards until the findings of fact have been made.

Item II of the petitioner's proposed facts appears to be within the scope of the issues. Subject to being proven, of course.

Item III pertains to the conditions of confinment of Ray prior to his guilty plea. Apparently, some consideration was given to this by the state court. Because this separate District Court has not received the record in this case from the appellate court, this different District Court cannot determine what type of evidentiary hearing was conducted on this question. However, the nature of Ray's confinement would appear, at most, to be one of total circumstances which go to the two primary issues in this case. To the extent that it can be shown to be a relevant circumstance on those issues, proof may be offered on this topic. However, this Court is not inclined to view at this time the cell assigned to petitioner at that time, as requested by counsel for respondent.

The proposed disputed issues of fact submitted by counsel for the respondent were much more abbreviated. All of them are covered by the specifically stated issues of the Court of Appeals and the petitioner.

Counsel for the respondent raised a "mixed question of law and fact," whether the attorney-client privilege between Ray and his former attorneys applies to this case. This Court is of the opinion and concludes that James Earl Ray has waived his attorney-client privilege with regard to all attorneys whom he consulted concerning the charge against him for the murder of Dr. King, insofar as the former privileged material is relevant to the issues in this Habeas Corpus case.

Subpoena or Deposition Evidence

At the preliminary hearing, counsel for the petitioner contended that the nature of this case requires that the proof of the witnesses should be offered orally at the hearing and, therefore,

the Court should determine that it could and would issue subpoenas to witnesses expected to be offered by the respondent, such as Messrs. Hanes, Huie and Foreman.[1] Counsel for the respondent disagrees and contends that Rule 45 FRCP applies to this case and, therefore, the Court's subpoena power is limited to 100 miles from the place of the hearing for witnesses not residing in this district.

Counsel for the petitioner rely upon *Harris v. Nelson*, 394 U.S. 386 (1969), wherein the Supreme Court considered the applicability of Rule 33 FRCP (Interrogatories to the Parties) to habeas corpus cases. In that case the Court held that Rule 33 FRCP did not apply strictly to habeas corpus proceedings, even though they are civil in nature, and even though Rule 81 FRCP provides that the civil rules apply to habeas corpus proceedings "to the extent that practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice" in civil actions. 394 U.S., page 290.

However, this Court noted that in habeas corpus cases the District Court "may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage." In this regard the Court noted the authority of the All Writs Act, 28 USC § 1651. 394 U.S., page 299.

Upon consideration of the contentions of the parties in the instant case, this Court concludes that *Nelson v. Harris* does not direct or authorize this Court to deprive the parties of taking depositions or require or authorize issuing subpoenas to appear in this district beyond the provisions of Rule 45 FRCP.

As noted in *Nelson v. Harris, supra,* at page 299, there is a specific, though flexible, statute pertaining to evidence in habeas

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[1] By agreement counsel for the parties have already taken Percy Foreman's deposition, but it is still the desire of the petitioner to require his presence. The Court has received a communication from Hanes that he is willing to come to the hearing.

corpus cases, 38 USC § 2246, which provides for taking evidence by "oral testimony, by deposition or upon affidavit and written interrogatory."

In 1963 another district court considered the applicability of Rule 45 FRCP to habeas corpus cases and determined that it could not subpoena witnesses who did not live in the district if their residences were more than 100 miles from the place of the hearing. *Lyles v. Beto*, 32 FRD 248 (S.D. Tex. 1963).

Discovery and Motions

Counsel for the petitioner indicated in their Memorandum for the Court that they contemplate taking considerable discovery and that they contemplate filing certain motions. Additionally, at the hearing both sides referred to the possible use of affidavits as proof for the hearing.

This Court does not construe *Harris v. Nelson, supra*, as prohibiting discovery. On the contrary, it is to be allowed in appropriate circumstances but not in strict accordance with FRCP. Because *Nelson v. Harris* requires this Court to "fashion appropriate modes of procedure" when necessary, this Court is of the opinion that the intended discovery should be expedited so that discovery disputes between the parties will be submitted to this Court and opposing counsel in writing by July 19, 1974. Similarly, any motions in the cause should be submitted by July 19, 1974. Similarly, any proposed use of affidavits should be submitted by July 19, 1974. This should include the affidavit if possible, if not, the name of the proposed affiant and the nature of the contents thereof.

There are many presently unknown but conceivable problems that could arise, particularly with regard to discovery from non-party witnesses. This prevents the Court from prescribing a pre-

cise time schedule. If presently unanticipated problems arise, an application may be made to the Court, subject to reasonable notice to opposing counsel, for appropriate relief in the light of this Court's jurisdiction.

This 24th day of June, 1974.

/s/ Robert M. McRae
United States District Judge

APPENDIX C

In the
United States District Court
For the Middle District of Tennessee

James Earl Ray,
Petitioner,

v.

Mr. J. H. Rose, Warden, Tennessee State Penitentiary, Nashville, Tennessee,
Respondent.

No. 6800.

PETITION FOR A WRIT OF HABEAS CORPUS

1. Comes the petitioner, James Earl Ray, by and through his attorneys, Bernard Fensterwald, Jr., Robert I. Livingston, and James H. Lesar, and petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. 2254.

2. Petitioner is currently serving a sentence for 99 years for First Degree Murder imposed by Judge Preston W. Battle on March 10, 1969 in Division III of the Criminal Court of Shelby County, Tennessee. (See Exhibit 1) Petitioner is confined in the Tennessee State Penitentiary at Nashville by the respondent who is warden of that institution.

3. Petitioner has exhausted his state remedies as required under 28 U.S.C. 2254(c). Petitioner pled guilty on March 10, 1969. Immediately thereafter, petitioner wrote the Trial Judge, the Honorable Preston W. Battle, two letters dated March 13

and March 26, 1969, asking for a trial and the appointment of counsel to assist him. (See Exhibit 2) In addition, Attorney Richard J. Ryan of Memphis, Tennessee, who had been engaged by petitioner's family, attempted to confer with petitioner so that he could properly prepare a motion for a new trial, but prison officials refused to allow him in to see petitioner.

Judge Battle died on March 31, 1969, without having taken any action on the two letters. On April 7, 1969, petitioner filed an Amended and Supplemental Motion for a New Trial which incorporated the two letters of March 13 and March 26 and added to them the claim that a new trial must be granted under the provisions of section 17-117 of the Tennessee Code. The successor judge, the Honorable Arthur Faquin, granted the State's Motion to Strike. Said judgment was appealed to the Court of Criminal Appeals and the Supreme Court of the State of Tennessee, affirmed by both, and the Petition to Rehear was denied.

On April 13, 1970, petitioner filed for relief pursuant to the Tennessee Post-Conviction Procedure Act. Then, on May 7, 1970, an Amended Petition for Post-Conviction Relief was filed; and, subsequently, on September 22, 1970, a Supplemental Petition was also filed. On April 20, 1971, *without having held an evidentiary hearing*, Judge William A. Williams granted the State's Motion to Strike. Petitioner filed an appeal to the Court of Criminal Appeals at Jackson, Tennessee. The Court of Criminal Appeals sustained the trial court's decision, whereupon petitioner filed, on March 13, 1972, a Petition for a Writ of Certiorari with the Supreme Court of Tennessee, which Petition was denied.

4. Because of the complicated and highly unusual circumstances surrounding petitioner's plea, this Petition will first present in summary form the legal grounds which cause petitioner to assert that he is being detained in custody in violation of the

Constitution of the United States. However, submitted with this Petition and incorporated in it is a Memorandum which lays out in greater detail some of the facts which substantiate petitioner's claim that his constitutional rights have been grossly violated.

5. In brief, petitioner avers that his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution have been violated. Petitioner further avers that his guilty plea was involuntarily entered as a result of the following violations of his right to due process and equal treatment of the laws:

Exculpatory evidence was withheld from petitioner by the British and American governments and the State of Tennessee.

Cruel and unusual punishment was inflicted upon petitioner during his incarceration prior to trial, vitiating his capacity to freely and voluntarily enter a plea.

Irreconcilable conflicts of interest on the part of petitioner's attorneys engendered enormous prejudicial publicity and caused his attorneys to pressure him not to take the witness stand in his own defense and instead to enter a plea of guilty against his will.

Petitioner's attorney entered into direct negotiation of the guilty plea with the Trial Judge.

By means of duress and bribery, petitioner's attorney coerced him into pleading guilty.

Petitioner's only alternatives to the pressures upon him and the conflicts of interest which denied him the right to effective assistance of counsel was foreclosed because the Trial Judge denied him the right to change attorneys.

In addition to these factors bearing upon the voluntariness of his plea, petitioner also avers that the Trial Judge failed to inquire into the factual basis for the guilty plea and neglected to determine whether petitioner understood the nature of the charge against him. Further, petitioner avers that he was deprived of his right to have counsel assist him in the preparation of a motion for a new trial, and that extrajudicial influences intervened in the trial process to make it a sham, a fraud, and a mockery of justice.

6. The legal grounds which petitioner relies upon to establish these violations of his constitutional rights are elaborated upon below. *Each* of the legal grounds set forth below is sufficient in itself to require that an evidentiary hearing be held on the merits. In addition, however, the *cumulative* effect of *each* of these violations upon the voluntariness of petitioner's plea must also be weighed.

The legal grounds upon which petitioner relies to secure his release from unlawful detention are as follows:

I. **Petitioner Was Denied Due Process During Extradition Proceedings in London, England.**

1. Petitioner was denied the right to have American counsel represent him at his hearing before the Bow Street Magistrate's Court.

2. This denial of the assistance of American counsel impaired petitioner's capacity to prepare a defense to extradition.

3. Virtually all evidence presented against petitioner at the extradition hearings was in affidavit form and thus not subject to cross-examination. In addition, the essential witnesses, such as FBI ballistics expert Robert Frazier, were not made available for cross-examination.

4. Although some of the evidence which was submitted to the Bow Street Court was exculpatory in nature, such as the affidavit by ballistics expert Robert Frazier, which showed that the bullet removed from Dr. King could not be linked to the rifle allegedly and implausibly left by petitioner on the sidewalk in front of Canipe's Amusement Center on South Main Street, petitioner's court-appointed attorney did not discuss this evidence with him, nor did he make any attempt to use it in petitioner's defense.

5. The American Embassy exerted subtle pressure on petitioner not to hire Arthur Hanes as his attorney and offered to provide him with a lawyer.

6. The United States Government refused to permit petitioner's attorney to accompany him on the plane flight from London to Memphis.

7. These violations initiated a pattern of unremitting constitutional deprivations which ultimately culminated in petitioner's coerced plea.

II. Petitioner Was Denied the Right to Effective Assistance of Counsel in Violation of the Sixth and Fourteenth Amendments.

A. Conflict of interest on part of Arthur Hanes, Sr.

Arthur Hanes, Sr. became petitioner's first American counsel. Even before Hanes made his first trip to England to see petitioner on June 19, 1968, he had already been guaranteed $40,000 by author William Bradford Huie. (See Exhibit 24 and pp. 153-154 of Exhibit 29) When Hanes was finally allowed in to see petitioner for the first time, on July 5, 1968, he induced petitioner to sign two agreements. One of these agreements gave Hanes a power of attorney to manage and sell all of Ray's property; the second agreement provided that Hanes would be petitioner's

literary agent. Neither contract made *any* reference to defending Ray. (See Exhibits 6-A and 6-B)

In addition, Hanes, Ray, and Huie later entered into two other contracts. (See Exhibits 6-C and 6-D) As a result of these contracts, petitioner's attorney was primarily beholden not to his client but to the literary and financial interests of Huie, thus compelling Hanes to violate Ray's legal rights and interests.

In consequence of the irreconcilable conflicts of interest thus established, petitioner's defense was damaged in the following ways:

1. Petitioner's attorney persuaded him to renounce his plans to appeal the Bow Street Court's extradition ruling, thus getting him to waive his rights under the Anglo-American Extradition Treaty. Yet prior to this, Hanes had secretly entered into an agreement with Huie which made Huie's payments to Hanes conditional upon petitioner's speedy extradition to the United States and the signing of a book contract. (See Exhibit 6-D)

2. These Hanes-Huie contracts, which Hanes inveigled petitioner into signing after his extradition to the United States, were intrinsically in conflict with petitioner's right to be presumed innocent until found guilty because the salability of Huie's literary and movie rights depended upon either a confession by petitioner that he had committed the crime or an admission that he was in some way criminally involved in a conspiracy and thus had something significant to relate which Huie could sell.

3. With the assistance of Hanes, Huie's literary partner, Huie wrote a series of articles purportedly based on inside knowledge obtained from petitioner which resulted in widespread prejudicial publicity and claimed that petitioner was guilty of the assassination of Dr. King and involved him in other, uncharged, crimes as well. (See Exhibit 25)

4. The Hanes-Huie contracts required that Hanes deliver questions from Huie to petitioner. Although virtually all of these questions were irrelevant to petitioner's defense, Hanes devoted much time to this enterprise. No matter how detrimental to petitioner's interests—and many of Huie's questions were impermissible—Hanes delivered the questions and allowed his client to answer them. (A small sample of these questions is contained in Exhibit 51)

5. Although petitioner specifically requested that Hanes hire a professional investigator to do investigative work in New Orleans, Hanes failed to do so.

6. The Hanes-Huie interest in the sale of literary and film rights also conflicted with petitioner's right to take the stand in his own defense. If petitioner took the stand there was nothing for Huie to sell and no enormous revenue, later estimated at up to $600,000, from which Hanes would take his cut. Consequently both Hanes and Huie pressured petitioner not to take the witness stand and Huie offered to pay a bribe to petitioner or a member of his family if petitioner would not take the witness stand. (See affidavit of Jerry Ray, attached as Exhibit 5-A)

7. Any public proceeding other than a confession of guilt destroyed the commercial value of Huie's rights. Consequently, Huie pressured Ray to admit involvement in the assassination of Dr. King. In order to get petitioner's confession, Huie sought to erode his confidence in a trial. After trying to beguile petitioner by claiming that if he confessed to having killed Dr. King out of race hatred or for money he would have sympathizers, Huie then told petitioner: ". . . if you just happened to stumble into all this, and you didn't know what the hell was going on, then no juror is going to give a damn about you." (See Exhibit 47-A at p. 3) Due to his conflict of interest, Hanes did not protect his client from these pressures but instead assisted Huie.

B. Conflict of interest on the part of Attorney Percy Foreman.

Petitioner's second American counsel, Percy Foreman, assumed all the conflicts of interest which Hanes had by renegotiating the Hanes-Huie-Ray contracts and inserting himself in place of Hanes, while insisting upon an even larger share of Huie's proceeds and *all* of Ray's. (See Exhibits 6-F and 6-G)

As a consequence of these irreconcilable conflicts of interest, petitioner's legal rights were violated in the following ways:

1. Foreman failed to make an adequate, if, indeed, *any* investigation of the case against petitioner. In fact, by Foreman's own admissions, he made no investigation of the case before deciding to plead his client guilty.

2. Foreman became Huie's new literary partner. Huie continued to work on his book and a third *Look* Magazine article. The enormous prejudicial publicity which resulted from Huie's *Look* articles—with a circulation of more than 7 million and a readership several times that size—was augmented by radio and T.V. coverage. This massive publicity prejudiced petitioner's Fifth, Sixth, and Fourteenth Amendment rights and his right to be presumed innocent until proven guilty.

3. In violation of petitioner's Fifth and Sixth Amendment rights, Huie also testified before the Shelby County Grand Jury as to what he had allegedly learned from and about petitioner Attorney Foreman made no attempt to stop Huie from testifying before the Grand Jury.

4. Because an open and public trial conflicted with the Foreman-Huie interest in the commercial value of their exclusive literary and movie rights—which Foreman later publicly estimated as worth up to $600,000 (See Exhibit 7)—Foreman coerced petitioner's guilty plea by means of threats, bribery, guile, and intimidation.

C. **Assistance of counsel was rendered ineffective by continuous surveillance.**

Petitioner avers that while incarcerated in Memphis prior to trial his cell was admittedly bugged by microphones and he was under continuous round-the-clock T.V. surveillance. In addition to the acknowledged bug, petitioner believes there were other, clandestine microphones. Furthermore, guards were present in petitioner's cell at all times and all written communications from petitioner to his lawyers were examined by guards before his attorneys left the prison. Petitioner's Motion to Grant Private Communication was denied by the trial judge. (See Exhibit 8)

Petitioner avers that these measures were neither necessary nor really intended for his security but did effectively violate his right to confide in private with his attorneys. In attempting to frustrate these bugs and T.V. cameras, petitioner and his counsel, Arthur Hanes, were reduced to lying on the floor and whispering in each other's ear.

D. **Attorney Foreman failed to investigate the case.**

Petitioner avers that attorney Foreman failed to make an investigation into the case against him. As a consequence, Foreman was both unprepared to go to trial and unable to properly advise his client on a plea had he been so disposed. Specifically, petitioner asserts that:

1. Attorney Foreman never asked petitioner whether he fired a shot at Dr. King.

2. Foreman filed no motion for discovery. Although a police officer told petitioner that all police within four miles of the scene of the crime had been required to submit written statements, Foreman declined to move for discovery of these statements when petitioner asked him to do so.

3. Foreman made no attempt to obtain a ballistics or spectrographic or any other analysis of the "bullet", bullet fragments, and other items of evidence allegedly connected with the shooting.

4. By his own admissions, Foreman decided to plead petitioner guilty before his alleged investigation of the case even began.

5. Petitioner had reason to believe that certain investigations were essential to his defense, so he requested that Foreman make them. However, these investigations were never made.

E. **Attorney Percy Foreman was physically and emotionally incapable of rendering effective assistance of counsel.**

A few months before Foreman entered the Ray case, the Court of Civil Appeals of Texas affirmed the decision of a lower court which awarded him $75,000 for injuries arising out of an automobile accident in which Foreman claimed he had suffered a whiplash injury. The court noted testimony that the injuries he suffered had affected his performance as a lawyer:

> (Foreman) testified that the lack of rest and the pain make him highly nervous and irritable to the extent that he is required to schedule important conferences for early in the mornings or not later than 10:00 o'clock in the morning. . . . *In important cases he invariably engages some other lawyer to deal with his clients because of his nervous condition.* (Italics added) (See *Bluebonnet Express Inc. v. Foreman*, 431 S.W.2d 45 (1968), attached as Exhibit 9)

In addition, the court record shows that Foreman claimed he was sick and confined to bed from December 23, 1968, through January 20, 1969. This was about a third of the time which the court had allotted to him for preparation of the case.

F. **Witnesses concealed or ordered not to talk.**

Petitioner asserts that his assistance of counsel was also rendered ineffective by the fact that witnesses were concealed or ordered not to talk, as instanced below:

1. Although the State provided petitioner with a list of 360 potential witnesses, saying some 80 or 90 of them would be called at his trial, it would not disclose the witnesses it actually intended to call.

2. Officials ordered witnesses not to talk with defense attorneys, investigators, or anyone else.

3. One crucial witness, Mrs. Grace Stephens, was wrongfully and secretly incarcerated in the Western State Mental Hospital under her maiden name solely because she would have testified favorably to petitioner. Thus, by trickery the State immediately deprived the defense of the wife of the State's only claimed eyewitness, Charles Q. Stephens.

4. The prosecution also sequestered the State's only alleged eyewitness, Charles Quitman Stephens, and instructed him not to talk.

G. **Dishonesty of counsel.**

Petitioner asserts that his right to assistance of counsel was rendered ineffective by the dishonesty of Percy Foreman. Foreman's staggering record of dishonesty is detailed at greater length in the Memorandum submitted with this petition. Here, however, petitioner charges that Foreman committed fraud on the court by stating to the Trial Judge that:

1. He had not and would not receive any fee for defending petitioner, when in fact he had already received a considerable

sum of money at the time he made such statements, and expected to get much more later on; and

2. He was depositing money received in trust for petitioner, when in fact he had deposited said money in his own name.

III. Petitioner Was Denied Due Process by the Withholding of Exculpatory Evidence.

Petitioner avers that much exculpatory information was withheld from him. A few of the more crucial items include:

1. The plain fact that the FBI ballistics expert had found that: "Because of distortion due to mutilation and insufficient marks of value, I could draw no conclusion as to whether or not the submitted bullet was fired from the submitted rifle." (See affidavit of Robert Frazier, Exhibit 10)

2. That Dr. King suffered a second, officially hidden wound, thus proving either that the missile which struck him fragmented or that a second shot was fired.

3. That, immediately after the crime, the State's only alleged eyewitness, Charles Quitman Stephens, could not and did not identify petitioner as the killer. In fact, although the State claimed at the trial that Stephens saw petitioner in the hallway after the shooting, an artist's sketch disseminated by the FBI and based on Stephen's description resembled not James Earl Ray but the photographs of a man taken into custody in the vicinity of Dealey Plaza on November 22, 1963. (Copies of the photograph and artist's sketch are attached as Exhibit 11)

4. Police dusted a clear handprint belonging to someone other than James Earl Ray on the wall of the bathroom from which it alleges the shot which killed Dr. King was fired. (A photograph of this handprint is attached as Exhibit 12)

5. The fact that police officials had reason to believe petitioner was not at the scene at the time of the crime.

6. Some important exculpatory material, such as the affidavit by FBI ballistics expert Robert Frazier, was contained in the some 200-odd pages of affidavits and other documents presented to the Bow Street Magistrate's Court. These court records were confiscated and made unavailable to petitioner and his lawyers, although repeated requests for them were made to both the British and United States Governments. (Some of this correspondence is contained in Exhibit 13) Ultimately copies of these documents were obtained, but only *after* petitioner's alleged "trial" and as a result of a Freedom of Information Act lawsuit instituted by a private citizen. (Described in the factual Memorandum submitted along with this Petition)

IV. **Petitioner's Guilty Plea Was Coerced**

A. **Incarceration in violation of the Eighth Amendment**

Petitioner avers that the cruel and unusual punishment to which he was subjected vitiated his ability to resist the improper pressures put upon him and caused him to plead guilty to a crime he did not commit. Specifically, petitioner avers that:

1. He was kept in isolation for 8 months under conditions which kept him from knowing whether it was night or day.

2. For eight months he was kept under bright lights and constant surveillance 24 hours a day. Guards were stationed at his cell around-the-clock. These guards constantly played their own radios and a T.V. set. In addition, petitioner was continuously surveilled by closed-circuit T.V. and microphones.

3. The Trial Judge denied a motion to correct these conditions.

4. As a result of these conditions, petitioner could not get proper rest. He became extremely nervous and suffered from chronic headaches and nosebleeds.

5. Because of this treatment and his own deteriorating physical and nervous condition, petitioner's resistance was eventually worn down and he was coerced into entering a guilty plea.

B. **Attorney Foreman coerced guilty plea by threats and bribery.**

Petitioner avers that his guilty plea was coerced by the threats and bribery of his own attorney, Percy Foreman. Specifically, petitioner avers that:

1. Foreman repeatedly threatened that if petitioner did not plead guilty he would be "barbecued." (See Exhibit 3) In writing Foreman advised petitioner that ". . . there is a little more than a 99% chance of your receiving a death penalty verdict if your case goes to trial. Furthermore, there is a 100% chance of a guilty verdict." (See Exhibit 14-A)

2. On February 18, 1969, petitioner handed Foreman a two-page handwritten letter listing the reasons why he did not want to plead guilty. Foreman immediately flew to St. Louis and read this letter to petitioner's family, who assembled at his demand. Foreman then attempted to pressure Ray's family to visit or write petitioner and urge him to plead guilty. (See Exhibits 5-A through 5-D and Exhibit 15)

3. Shortly before the scheduled trial date, petitioner offered to let Foreman withdraw from the case. However, Foreman refused and instead insisted upon a guilty plea. In return for a promise that petitioner would plead guilty the following day "without any unseemly conduct on your part in court," Foreman generously agreed to sign over to petitioner any income due Foreman under the contract with Huie which was in excess of

$165,000. (See Exhibit 14-C) As Foreman estimated the revenue from the Huie contracts at up to $600,000 (See Exhibit 16), this amounted to a bribe of several hundred thousand dollars. This impression was buttressed by a letter sent by Huie which stated that additional earnings would be received shortly, and that he was negotiating with Carlo Ponti over film rights. (See Exhibit 17)

C. **Guilty plea was coerced by judge's statement that he would not allow further changes in counsel.**

Two actions taken by the Trial Judge added to the coercive pressures which forced petitioner to plead guilty. Ray had fired Hanes because Foreman and his brother Jerry had persuaded him that Hanes had a serious conflict of interest and was not running the defense himself. Thus, the firing of Hanes was not frivolous but dictated by the circumstances. But at the November 12, 1968 hearing at which Foreman formally entered the case, the Trial Judge, himself under pressure from the prosecution and business and civic leaders, made it clear that he would not countenance any further change of attorneys. (See Exhibit 18) Then, on January 17, 1969, without petitioner's approval and against his desires, Judge Battle made the Memphis Public Defender, Hugh W. Stanton, co-counsel in the case and ordered him to be ready to take the case to trial if anything should happen to Foreman. Petitioner did not want Stanton as his attorney and refused even to talk with him on the one occasion when Stanton came to the jail.

Thus, petitioner found himself in this situation: on the one hand there was Foreman, unprepared to go to trial, refusing to withdraw from the case, and exerting extreme pressure on petitioner to get him to plead guilty. On the other hand, if petitioner fired Foreman, he then faced the threat of being forced to go to trial with Stanton, whose competence Foreman disparaged in caustic comments he made to petitioner's brothers. But not only

was Stanton just as unprepared to go to trial as Foreman, he was also, petitioner believed, chiefly a specialist in guilty pleas rather than a trial lawyer. In fact, as soon as he was appointed to the case on December 18, 1968, the unwanted and unsolicited Stanton began to negotiate a guilty plea **without petitioner's knowledge or consent.** (See Exhibit 19)

V. **Direct Negotiation of the Guilty Plea With the Trial Judge.**

Petitioner's attorney negotiated the guilty plea directly with the Trial Judge and Judge Battle himself personally dictated the terms of the deal. (See Exhibit 20) Section 3.3(a) of the American Bar Association's *Standards Relating to Pleas of Guilty* proscribes such conduct and petitioner contends that this direct negotiation of the guilty plea with Judge Battle violated his right of due process. In addition, petitioner avers that Judge Battle's participation in the negotiation of the plea made it impossible for him to determine its voluntariness objectively.

VI. **Failure of Trial Judge to Ascertain Factual Basis for Plea Violated Due Process.**

Petitioner asserts that his rights under the Fourteenth Amendment were violated by the failure of the Trial Judge to ascertain whether or not there was a factual basis for the plea.

After petitioner pled guilty according to script, petitioner's attorney polled the jury to make certain in advance that each member seated would blindly ratify the guilty plea. After the prosecution and Foreman had accepted the jury, but before the jury was sworn, petitioner rose in open court to disagree with Foreman's gratuitous declaration that there was no conspiracy to assassinate Dr. King. (See Exhibits 21-A and 21-B) When petitioner thus demurred to Foreman's attempt to imply that he

had fired the shot which killed Dr. King, Judge Battle should have brought the guilty plea proceedings to a swift halt. However, Judge Battle adhered to the deal he engineered with Foreman and sloughed off petitioner's dissent without the detailed inquiry it demanded.

VII. **Failure of Trial Judge to Determine Whether Petitioner Understood the Nature of the Charge Against Him Violated Due Process.**

Judge Battle failed to conduct an adequate inquiry into petitioner's understanding of the charge against him. The failure of the Trial Judge to ascertain personally that petitioner understood the elements of the crime violated petitioner's Fourteenth Amendment right of due process. The failure was particularly insidious in this case because petitioner's attorney was himself exerting coercive pressures for a guilty plea and thus could not be trusted to correctly represent the elements of the charge to his client.

VIII. **Petitioner's Rights Under the Fourteenth Amendment Were Violated by Extrajudicial Interventions Into the Trial.**

Petitioner alleges that extrajudicial influences intervened in the trial process to deprive him of his rights of due process and equal protection of the law. Among these were:

1. Huie in conversation with Judge Battle persuaded him that the truth about the assassination of Dr. King would not come out at a trial. (See Exhibit 22, pp. 180-182) The result was that Judge Battle became convinced ". . . that the trial would have muddied our understanding of the substantial evidence which established Ray as the killer." (See Exhibit 23) Thus, Huie's unwarranted and improper intervention prejudiced Judge Battle

to believe that petitioner was involved in a plot to assassinate Dr. King and actually did kill Dr. King. In turn, Huie's intervention influenced Judge Battle's improper guilty plea negotiations and affected his capacity to objectively determine whether petitioner's plea was voluntary.

2. Each time petitioner's trial date approached, Huie pressured him to confess guilt. (See Exhibits 47-A and 47-B) In trying to force a confession out of Ray, Huie subverted the judicial process:

A. Huie sought to erode petitioner's confidence in a jury trial by asserting that while a confession of race hatred and guilt would help him, ". . . if you just happened to stumble into all this, and you didn't know what the hell was going on, then no juror is going to give a damn about you." (See Exhibit 47-A)

B. In his February 11, 1969 letter to Ray, Huie quoted the Trial Judge's purported statement that Huie's pre-trial articles "made a fair trial almost impossible". (See Exhibit 47-B) This conveyed the message that the Trial Judge himself had already concluded that going through with a trial would be an exercise in futility. Obviously, then, as Huie expressly stated later on in this letter, petitioner's only course of action was to plead guilty and ask for leniency.

C. In his February 11th letter, Huie coupled offers of money and personal assistance—if petitioner would confess—with intimidating assertions that petitioner would get the electric chair or 99 years in prison if he persisted in going through with a trial. After asserting that petitioner had no hope from a jury and that the Trial Judge had already determined that a fair trial was almost impossible, Huie then held himself out as the only hope for petitioner. In reality, Huie's offer of help was a threat: "I might even help you get out of prison in 10 or 12

years, *depending on how much you cooperate with me.*" (Italics added) (See Exhibit 47-B) If petitioner did not "cooperate" by confessing guilt, then there would be no money, no help, and Huie would have to *assume* petitioner's guilt and proclaim it to the world.

3. Pervasive prejudicial publicity, much of it erroneous, distorted, and inspired by government leaks, made the proceedings against petitioner a sham, a fraud, and a mockery of justice. (A small sample of this publicity is contained in Exhibits 25 and 50) According to Huie, the Trial Judge had himself stated that Huie's *Look* magazine articles "made a fair trial almost impossible". (See Exhibit 47-B) As early as September 12, 1968, petitioner complained to the Trial Judge about the publicity by Huie and other writers, concluding: "I believe if these type of articles don't stop I might as well waive the trial and come over and get sentenced." (See Exhibit 46) In coercing petitioner's guilty plea, attorney Foreman relied heavily on the effect of this prejudicial publicity. (See Exhibit 3, pp. 8-9 and Exhibit 14-A)

4. The Federal Government preempted the State of Tennessee and conducted an investigation on the basis of a spurious conspiracy charge filed in Birmingham, Alabama. No alleged conspirator was ever arrested on this charge. However, in spite of the fact that the Government consistently maintained that petitioner was the lone assassin of Dr. King, this conspiracy charge remained hanging until petitioner moved for a speedy trial in late 1971, at which time the charge was dismissed when the Government failed to respond. (See Exhibit 44)

5. The United States Department of Justice intervened in a State of Tennessee trial to try and obtain approval of the guilty plea deal, even going so far as to pressure the family and associates of Dr. King to approve the guilty plea and accept it as a "solution" to the crime.

IX. **Petitioner Was Denied Right to Counsel in Filing Motion for New Trial.**

Petitioner alleges that obstruction by state officials prevented him from filing a motion for a new trial with the aid and assistance of an attorney retained by his family. Specifically, petitioner alleges that:

1. On March 26, 1969, the Warden at the State penitentiary at Nashville, Lake F. Russell, denied petitioner access to Mr. Richard Ryan, a Memphis attorney whom petitioner's family had asked to represent him.

2. Prison officials also refused to grant petitioner access to law books so that he could determine the proper form for a motion for a new trial.

3. Delay in transmitting petitioner's letters of March 13 and March 26, 1969 and the refusal to allow petitioner's counsel in to consult with him prevented the Trial Judge from granting his motion for a new trial.

X. **Conclusion.**

Because of the foregoing facts, petitioner is being restrained of his liberty by the respondent in violation of the Constitution of the United States.

Wherefore, petitioner prays as follows:

1. That under 28 U.S.C. 2243, this Court issue an Order that the respondent show cause why this petition should not be granted and the petitioner discharged.

2. That this Court set out in the Order a return date of three days.

3. That this Court set the matter down for an evidentiary hearing within five days after the return.

4. That this Court grant such other relief as to the Court may seem just and proper.

/s/ BERNARD FENSTERWALD, JR.
Attorney for Petitioner
910 16th Street, N.W.
Washington, D.C. 20006

/s/ JAMES HIRAM LESAR
Attorney for Petitioner
910 16th Street, N.W.
Washington, D.C. 20006

/s/ ROBERT I. LIVINGSTON
Attorney for Petitioner
910 Commerce Title Building
Memphis, Tennessee

Dated Dec. 4, 1972

APPENDIX D

United States Court of Appeals
For the Sixth Circuit

Jimmy H. Rose, Warden, Petitioner, v. United States District Court for the Western District of Tennessee, Western Division and Honorable Robert M. McRae, Judge, Respondent.	74-2036.

ORDER

Before: Phillips, Chief Judge, Celebrezze and Miller, Circuit Judges.

James H. Rose, Warden of the Tennessee State Penitentiary, has filed with this Court his petition against the United States District Court for the Western District of Tennessee, Western Division, and the Judge of said court, the Honorable Robert M. McRae, seeking the issuance of the writ of mandamus and/or prohibition commanding the respondent judge to vacate a number of discovery orders issued by him, copies of which are attached to the petition in Appendix A. The said discovery orders generally provide for the production by non-parties of certain documents and other items of evidence for inspection and copying by the petitioner, James Earl Ray, or his counsel, in the case of *James Earl Ray, Petitioner v. J. H. Rose, Warden, Respondent*, pending in the said United States District Court for the Western District of Tennessee for an evidentiary hearing in ac-

cordance with the remand directed by this Court in its opinion in the case of *James Earl Ray, Petitioner-Appellant, v. J. H. Rose, Warden, Respondent-Appellee*, 491 F.2d 285. In said action the petitioner Ray seeks the issuance of the writ of habeas corpus, challenging the validity of his conviction and sentence by a Tennessee criminal court on the charge of first degree murder in the assassination of Dr. Martin Luther King, Jr. The original habeas petition was filed in the United States District Court for the Middle District of Tennessee, but was dismissed by that court without an evidentiary hearing. Upon appeal, this Court in an exhaustive opinion found that the allegations of the petition were sufficient to require a full evidentiary hearing to determine the truthfulness of the allegations of the petition. The Supreme Court of United States having denied certiorari (cert. denied —U.S.— (1974)), the action was duly remanded to the United States District Court for the Middle District of Tennessee. Thereafter, the latter court, finding that the action could more conveniently be tried in the Western District of Tennessee, transferred it to that court for holding the evidentiary hearing.

It appears that some of the discovery orders pertain to non-parties residing outside of the territorial jurisdiction of the district court, while others pertain to non-parties within the district court's jurisdiction. It is insisted by the Warden in his petition for mandamus and supporting memorandum that the district court was without authority to grant discovery from non-parties living beyond its territorial jurisdiction, and further that the court was without authority to grant discovery where such discovery is not shown to have been necessary for a full and fair hearing on the merits of the petitioner's claim, and where the material sought is not admissible as evidence.

It is further contended by the petitioner that habeas corpus proceedings resemble criminal trials and that any procedure fashioned by the court for discovery in such cases should follow

the analogy of the Criminal Rules rather than the Federal Rules of Civil Procedure.

The district judge's response to the petition for the writ of mandamus is attached hereto as Appendix A.

In view of the wide scope of the evidentiary hearing directed by this Court in its opinion in the case of *Ray v. Rose*, supra, and in view of the district judge's response to the petition in which he clearly indicates that his discovery orders were fashioned to accomplish the objectives of such a hearing, and in further view of the fact that the district judge's response indicates that he followed closely the procedure recognized as appropriate in habeas corpus cases in *Harris v. Nelson*, 394 U.S. 286, at 298-301 (1969), we are of the opinion that the said discovery orders were well within the exercise of the sound discretion of the district judge, and that the petition for mandamus and or prohibition is without merit.

It is well settled that the writ of mandamus will not issue from an appellate court to control or direct the rulings of a trial court in the absence of a clear showing of abuse of discretion. We find no such abuse in this case. *See* 7 Moore's Fed. Prac. ¶ 81.07, Fn. 12.

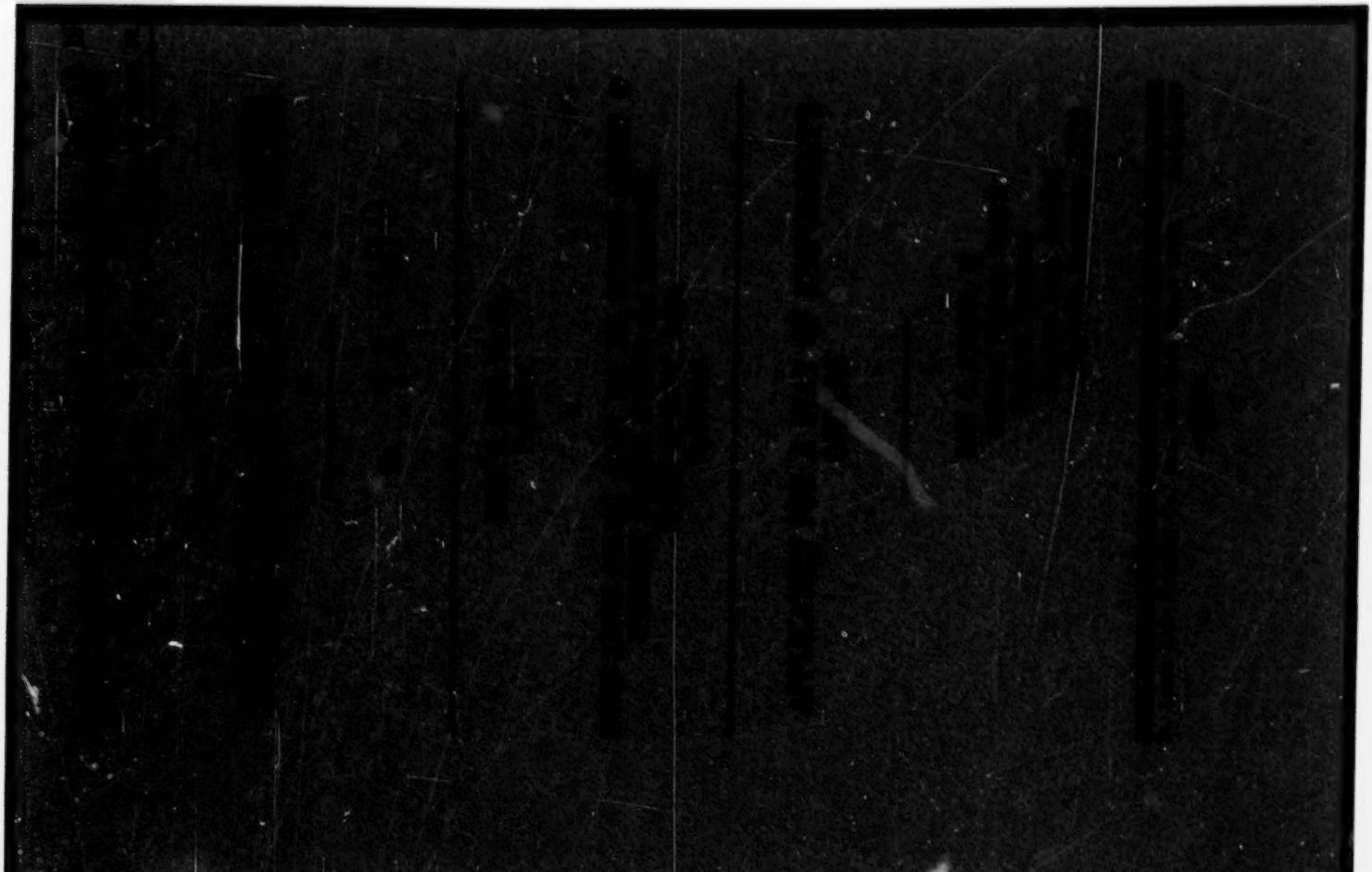
From an examination of the record we find that the documents and other items embraced by the discovery orders are relevant and properly the subject of discovery by analogy to the Federal Rules of Civil Procedure. For purposes of discovery the test is relevance and not the strict test of admissibility.

It is to be observed that the discovery orders directed by the district judge in this case afford the non-parties in question a full opportunity to object on the grounds of unreasonableness, or oppressiveness, or other grounds recognized elsewhere in the usages and principles of law.

It is therefore Ordered and Adjudged that the said petition for mandamus and/or prohibition be and the same are hereby denied.

Entered by Order of the Court

/s/ John P. Hehman
Clerk



IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

JIMMY H. ROSE, Warden,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION, and HONORABLE ROBERT M. McRAE, Judge,
Respondent.

APPLICATION FOR A STAY OF RESPONDENT'S ORDERS

Petitioner, by and through the Attorney General of the State of Tennessee, pursuant to Rules 27 and 51 of the Rules of the Supreme Court of the United States, hereby applies to the Supreme Court for a stay of the orders entered August 22, 1974 by the Honorable Robert M. McRae, Jr., U. S. District Court for the Western District of Tennessee, Western Division. Petitioner has this day filed a Petition for a Writ of Certiorari and has previously applied, on September 16, 1974 for a stay order from the United States Court of Appeals for the Sixth Circuit, which application was denied by the dismissal of Petitioner's Petition for a Writ of Mandamus on October 3, 1974. See Appendix.

In support of this application, petitioner respectfully shows as follows:

(1) Petitioner will be irreparably injured and permanently aggrieved if the orders of the District Court are allowed to stand pending consideration of petitioner's Petition for a Writ of Certiorari in this Court. The orders in question are being implemented daily and the cause comes on for hearing on October 22, 1974, less than three weeks from this date. The denial of this application will result in immeasurable harm by these unwarranted invasions of individual and corporate privacy.

(2) A stay is necessary to preserve the issues that are raised by petitioner's Petition for a Writ of Certiorari. A denial of this stay may result in the mootness of the issues prior to a final decision. The orders of the District Court present substantial questions of judicial administration which need be answered and can only be answered prior to a hearing of the cause.

(3) The questions raised in this case are extraordinary and involve a question of first impression under the doctrine of *Harris v. Nelson*, 394 U.S. 286 (1969). Respondent clearly abused his discretion and acted beyond his jurisdictional powers.

CONCLUSION

For the aforementioned reasons, petitioner prays for an order staying the enforcement of respondent's discovery orders pending a decision on petitioner's Petition for a Writ of Certiorari filed this day in this Court.

Respectfully submitted

.....

BART C. DURHAM, III
Assistant Attorney General
State of Tennessee

Certificate of Service

I hereby certify that I have mailed copies of the foregoing Application for a Stay and Motion for a Hearing this 9th day of October, 1974 to:

Honorable Robert M. McRae
United States District Court
Western District of Tennessee
Western Division
Memphis, Tennessee 38103

Mr. Bernard Fensterwald
Attorney at Law
910 16th Street, N.W.
Washington, D. C. 20006

Mr. James H. Lesar
Attorney at Law
1231 4th Street, N.W.
Washington, D. C. 20024

Mr. Robert Livingston
Attorney at Law
Commerce Title Building
Memphis, Tennessee 38103

.....

WILLIAM J. HAYNES, JR.
Assistant Attorney General
State of Tennessee

AFFIDAVIT IN SUPPORT OF MOTION FOR A STAY

State of Tennessee
County of Davidson

RE: *Rose v. United States District Court for the Western District of Tennessee and Honorable Robert M. McRae, Judge.*

I, William J. Haynes, Jr., Counsel for the petitioner, Jimmy H. Rose, first being duly sworn hereby make oath that the following facts are true:

On August 30, 1974, I mailed the petitioner Jimmy H. Rose's Petition for a Writ of Mandamus to the Clerk of the United States Court of Appeals for the Sixth Circuit in *Rose v. United States District Court for the Western District of Tennessee, Western Division and Honorable Robert M. McRae, Judge.*

On September 12, 1974, I mailed a Motion for a Stay of Respondent's Discovery Orders to the Clerk of the United States Court of Appeals for the Sixth Circuit in the above styled cause. To date, no Order has been entered on this Motion for a Stay. The absence of an Order on this Motion is resulting in irreparable injury to the petitioner.

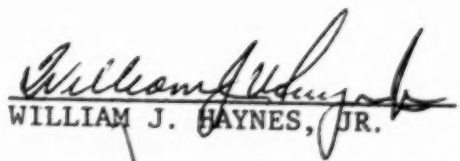
On October 3, 1974, the United States Court of Appeals for the Sixth Circuit denied Petition for Writ of Mandamus.

On this date, October 4, 1974, I have mailed to the Clerk of the United States Court of Appeals for the Sixth Circuit, a Motion for a Stay of the Order entered by the United States Court of Appeals for the Sixth Circuit.

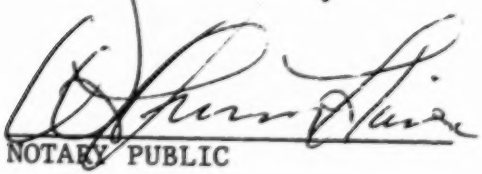
On October 2 and 3, 1974, discovery from the Shelby County Criminal Court Clerk, the Shelby County District Attorney

General, and the Shelby County Public Defender was taken by the attorney and an investigator for James Earl Ray.

Sworn to and subscribed by me this 4th day of October, 1974.



WILLIAM J. HAYNES, JR.



NOTARY PUBLIC

My commission expires February 5, 1978.

(Seal)